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December 18, 2000

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: Equal Employment Opportunity Rules
MM Docket 98-~~206~~ 204
MM Docket 96-16

Dear Ms. Salas:

Transmitted herewith, on behalf of Fletcher, Heald & Hildreth, P.L.C., are an original and nine copies of its "Petition for Partial Reconsideration" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

Anne Goodwin Crump

Anne Goodwin Crump

AGC:mah
Enclosures

cc: Roy W. Boyce, Esquire (with enclosure) **By Hand Delivery**

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BEFORE THE

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DEC 18 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Broadcast and Cable	)	MM Docket No. 98-204
Equal Employment Opportunity Rules and Policies	)	MM Docket No. 96-16
and Termination of the EEO Streamlining	)	
Proceeding	)	

Directed to: The Commission

PETITION FOR PARTIAL RECONSIDERATION

The law firm of Fletcher, Heald & Hildreth, P.L.C. ("FH&H"), on behalf of its clients, hereby respectfully requests partial reconsideration of its *Memorandum Opinion and Order* in the above-captioned proceeding, FCC 00-338, released November 22, 2000 ("*MO&O*"). With respect thereto, the following is submitted:

1. In the *MO&O*, the Commission addressed a number of issues related to the broadcast and cable Equal Employment Opportunity ("EEO") regulations and policies adopted by the Commission in the *Report and Order* in the above-captioned proceeding, 15 FCC Rcd 2329 (2000). In addition, the Commission provided a formal interpretation of its policy with regard to the status of owners of broadcast stations who also are employed at the station, a policy which previously had been expressed only informally. Since the *MO&O* contained the first statement of this policy, a petition for reconsideration concerning this matter is appropriate at this time.

2. In the *MO&O*, the Commission specifically addressed the question of whether a person with an ownership interest in a broadcast licensee who also is employed at the licensee's station should be considered to be an employee for purposes of application of the EEO rules and policies. The Commission concluded that an owner with a controlling interest, which is defined as 50 percent or greater voting control, should not be considered to be a station "employee." The Commission reasoned that for a controlling principal of a licensee, any position held at the licensee's station would be an incident of ownership rather than a normal employment relationship. As further support for its position, the Commission noted that a controlling owner cannot be hired or fired in any normal sense. The Commission refused, however, to apply the same principle to owner/employees with less than 50 percent voting control due to the different circumstances which might apply to them.

3. This ruling represents an unwarranted restriction on the Commission's policy with regard to owner/employees. In limiting the application of its policy to only those owners with voting control, the Commission ignores the realities of many closely held licensees which have more than two principals. In such circumstances, even though no one party may have control, it remains the case that owners often work at their stations as owners and undertake everything from management to sweeping the floor in order to make their businesses successful. In such closely held companies, in which all of the owners have invested of themselves, the treatment of owner/employees should not depend solely on whether there are two equal principals or three, but such would be result of the Commission's new interpretation of its policies.

4. For example, in the case of licensee which is a family corporation held by three siblings, each with an equal vote, any of the siblings which worked at the licensee's station would be treated

as a mere employee, as none of them could have a 50 percent or greater vote. Likewise, the same result would obtain in the case of two parents and two children, each with an equal vote, and with both children working at the station. Similarly, three close friends might get together to purchase one or more stations, with one of the partners to serve as the manager of the stations for the entire group. In all three of these cases, the owner/employee would be considered as an employee rather than as an owner.[1] The Commission's rationale for determining that controlling owners who work at a station should not be treated as employees would apply equally well to all three of these situations, however.

5. As with a controlling owner, the positions held at the stations by minority owners in a small group would be far more an incident of ownership than a normal employment relationship. While it might be theoretically possible for two members of a company to get together and vote to remove a third member from his employment position, the likelihood of successfully completing this type of move in such a small company would be slight, and the ramifications of acting in this matter would go far beyond a normal firing of an employee. Obviously, the third person would continue to retain a substantial ownership interest and thus would continue to influence the affairs of the licensee. Thus, there could be no clean break with that individual as would normally be the case with the firing of an employee. Furthermore, personal considerations are far more likely to outweigh business interests in a closely held company, as those involved often are family members or close friends. Clearly, the dynamics of a relationship among equal, or substantially equal, owners are far

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[1] To illustrate this point, an analogy could be drawn to a law firm made up of partners and associates. Clearly the associates are employees of the law firm rather than owners. Under the Commission's newly stated policy, however, if there were more than two partners, all of those partners also would be treated as employees.

different from those of an employer/employee relationship. Therefore, the Commission's policy with regard to owner/employees should not be implemented so as to exclude all minority owners of a broadcast licensee.

6. FH&H is aware, however, that there are situations which involve stock ownership as an incident of employment rather than employment as an incident of ownership. FH&H submits, however, that despite the fact that such arrangements are widely varied as to their details, there are certain characteristics which would serve to distinguish between the two different types of arrangements. For example, an ownership interest which serves as an employee incentive or bonus generally does not require the employee to contribute capital to the company. Additionally, the owners of a company are unlikely to grant to an employee, whether as a bonus, incentive or stock option, an interest which would amount to as much as 20 percent of voting control.

7. Accordingly, FH&H urges the Commission to modify its policy to specify that any person holding a 20 percent or greater voting interest in a broadcast licensee, who has also made a capital contribution in any amount to the company, shall not be considered as an employee of the licensee. While not directly applicable to EEO rules and policies, the Commission has elsewhere found that the ownership of 20 percent of a company gives that owner significant power to influence the affairs of the company. Thus, for example, even passive entities such as investment companies, insurance companies, and banks which own stock in a licensee through their trust departments are considered to have a cognizable interest in the licensee if they own 20 percent or more of the licensee's outstanding voting stock. *See*, 47 C.F.R. §73.3555, Note 2(c). Clearly, therefore, the Commission has determined that a 20 percent voting interest provides substantial authority as an owner. This level of influence over the direction of a licensee's business is inconsistent with a status as a mere

employee. Likewise, the making of a capital contribution to a company demonstrates the owner's status as a principal rather than an employee.

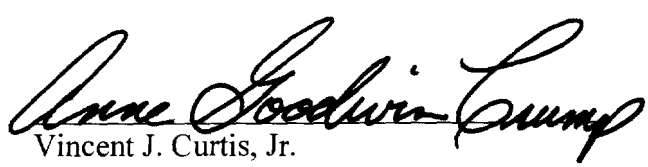
8. The policy proposed herein would be clear and simple in its application. The amount of each owner's voting control in a licensee is a matter of record, reported by each licensee to the Commission in applications for assignment of license and transfer of control, as well as routine ownership reports. Thus, the proposed numerical standard of 20 percent of voting control would be easy for licensees to understand and for the Commission's staff to administer. Furthermore, licensees typically maintain records of capital contributions as part of their basic organizational documents. Therefore, if a particular owner were questioned as to his status, the determination could be quickly and simply made by reference to that documentation. Moreover the determination to be made would be one of fact, not subject to substantial interpretation or uncertainty.

9. Accordingly, for the reasons set forth herein, the Commission should expand its policy with regard to the treatment of owner/employees to include all persons holding 20 percent or more voting control of a licensee, who have also made any capital contribution to the entity in which they have an ownership interest. This policy would more accurately reflect the realities of closely held companies which might have more than two stockholders, and it would be simple in application.

WHEREFORE, the premises considered, FH&H hereby respectfully requests that persons having a 20 percent or greater voting interest in a broadcast licensee, who have made a capital contribution to the licensee or a direct parent company of the licensee, and who are employed at a station or stations licensed to that licensee, should not be considered as employees of the licensee.

Respectfully submitted,

FLETCHER, HEALD & HILDRETH, P.L.C.

By: 
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